09-49.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

# AMENDED PLAN
# FOR THE
# RANDOM SELECTION OF GRAND AND PETIT JURORS

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Pursuant to the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. 1861 et seq., (hereinafter the "Act"), the following Plan is hereby adopted by the Court, subject to approval by the reviewing panel, consisting of the members of the Ninth Circuit Judicial Council and the Chief Judge of this Court, and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

## I.
## DECLARATION OF POLICY

It is the policy of the Eastern District of Washington that all litigants in this Court, entitled to trial by jury, shall have the right to grand and petit juries selected at random from a fair cross-section of the community in each jury division wherein the Court convenes, or as may be deemed appropriate by a judicial officer by combining Jury Division A and Jury Division B for the random selection of petit juries. Further, all citizens resident within the district shall have the opportunity to be considered for service on grand and petit juries and shall have the obligation to serve as jurors when summoned for that purpose.

## II.

## DISCRIMINATION PROHIBITED

No citizen shall be excluded from service as a grand or petit juror in this Court on account of race, color, religion, sex, national origin or economic status.

## III.

## APPLICABILITY OF THE PLAN

The Eastern District of Washington is hereby divided, for jury selection purposes only, pursuant to Section 1869(e) of the Act, as follows:

> Jury Division "A", consisting of northeast Adams county and the complete counties of Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens and Whitman.
>
> Jury Division "B", consisting of southwest Adams county and the complete counties of Benton, Franklin, Kittitas, Klickitat, Walla Walla and Yakima.

Divisions A and B have separate Qualified Wheels, with names drawn from the corresponding counties listed above. The provisions of the Plan apply to the entire district unless specifically indicated to the contrary.

## IV.

## MANAGEMENT AND SUPERVISION OF THE JURY SELECTION PROCESS

The Clerk of the Court shall manage the jury selection process under the supervision and control of the Chief Judge. The Court may, at the option of the Clerk, use a computer center or mailing service to assist in mailing questionnaires or summonses.

## V.

## JURY SELECTION SOURCES

The judges of this Court find that the prospective grand and petit juror names will be drawn from two sources: 1) general election voter registration lists, and 2) the records of holders of drivers' licenses and identification cards. The records of registered voters in each presidential general election are maintained in the books, lists, and/or automated voter registration systems of the Secretary of State, Olympia, Washington. The Department of Licensing, Olympia, Washington, maintains the lists and/or automated records of holders of drivers' licenses and identification cards. These source lists shall be merged and duplicate names removed. The merged list will become and be referred to as the source list for the Jury Master Wheel. The judges of this Court do find that the source list, as above described, represents a fair cross-section of the community in this district. Accordingly, names of grand and petit jurors serving in this Court shall be selected by randomized procedures from this source list.

## VI.

## RANDOM SELECTION PROCEDURES

The selection of names from complete source list databases in electronic media for the Master Jury Wheel shall be accomplished by a purely randomized process through a properly programmed electronic data processing system. A properly programmed electronic data processing system for pure randomized selection shall be used to select names from the Master Wheel for the purpose of

determining qualification for jury service, and from the Qualified Wheels for summoning persons to serve as grand or petit jurors.

Such random selections of names from the source list for inclusion in the Master Wheel by data computer personnel must insure that each county within the jury division is substantially proportionally represented in the Master Jury Wheel in accordance with 28 U.S.C. § 1863 (b)(3). The selections of names from the source list, the Master Wheel, and the Qualified Wheels must also insure that the mathematical odds of any single name being picked are substantially equal.

## VII.

## COMPOSING AND MAINTAINING THE MASTER JURY WHEEL

The judges of this Court find that names to be placed in the Master Jury Wheel shall be selected at random in such a total number as may be deemed sufficient for a two (2) year period. The Master Jury Wheel currently in full force and effect shall be emptied and refilled every two years, not later than June 1 of the year following a general election.

The number of names drawn from each county shall be in substantially the same proportion as that county's representation in the source list. After first determining the total number of names needed for the Master Jury Wheel, and then the proportionate share of names to be drawn from the source list for each particular county, the Clerk shall proceed through the use of a properly programmed electronic data processing system to make the initial selection of names from the source list.

The Clerk shall maintain a Master Jury Wheel for the district. The names and addresses of all persons randomly selected from the source list shall be placed in the Master Jury Wheel. Pursuant to Section 1863(b)(4) of the Act, the minimum number of names to be placed in the Master Jury Wheel shall be at least one-half of 1 percent of the total number of names on the source list.

Any judge of the district may order additional names to be drawn from the source list to augment the Master Jury Wheel, as needed, following the procedures described above.

National Change of Address Database. At least yearly, the Clerk shall submit the names on the Master Jury Wheel to an address verification service. The service will provide updates using the U.S. Postal Service change-of-address system, and corrections will be made as appropriate before mailing qualification forms to potential jurors.

## VIII.

## FORMING THE QUALIFIED WHEELS

A. Drawing of Names from the Master Wheel. The Clerk, either all at one time or at periodic intervals, shall draw at random from the Master Jury Wheel the names of as many persons as may be required to maintain an adequate number of names in the Qualified Jury Wheels. The number of names to be drawn shall be determined by the Clerk based upon anticipated juror demands by the Court plus a margin of extra names sufficient to compensate for the estimated number that will turn out to be unavailable or ineligible.

In accordance with Section 1864(a) of the Act, as amended, the Clerk shall prepare and have mailed to every person whose name is so drawn, a juror qualification form, accompanied by instructions to execute and return the questionnaire, duly signed and sworn, within ten days to the Clerk by mail or through the Court's Internet website, when that option is available.

B. Supplemental Draw For Undeliverable and Non-Responding Juror Qualification Forms. For all qualification forms returned to the Court as "undeliverable" or those to which no response has been received (after the Clerk has sent a follow-up questionnaire to the person who has not responded), the Clerk, as soon as practicable, shall issue the same number of new juror qualification forms to be mailed to addresses within the same zip code area to which the undeliverable or non-responding juror qualification forms had been sent. If qualification forms from the supplemental draw are returned undeliverable, no additional qualification forms will be issued. If no names from that zip code are available, no additional qualification form will be mailed. The Clerk shall draw these names for additional juror qualification forms from the Master Jury Wheel.

## IX.

## QUALIFICATIONS FOR JURY SERVICE

Any judge of this district, on his/her initiative or upon recommendation of the Clerk, or the Clerk under supervision of the Court, shall determine solely on the basis of the information provided on the juror qualification form, and other competent evidence, whether a person is unqualified for, or exempt, or to be

excused from jury service. The Clerk shall enter such determination in the jury management computer system and shall have the ability to print this information for inspection by authorized parties. If a person fails to return a completed juror qualification form as instructed, the Clerk may thereupon pursue the matters each and all in accordance with the provisions of Section 1864 of the Act, as amended.

In making such determination, the District Judge or the Clerk shall deem any person qualified to serve on grand and petit juries in this district unless the person:

(a) is not a citizen of the United States eighteen (18) years old who has resided for a period of one year within the judicial district; or

(b) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form; or

(c) is unable to speak the English language; or

(d) is incapable, by reason of mental or physical infirmity, to render satisfactory jury services; or

(e) has a charge pending against him/her for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his/her civil rights have not been restored.

## X.

## EXCUSES ON INDIVIDUAL REQUEST

The judges of this Court find that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act, as amended, and shall be granted upon individual

request to those:

1. Over 70 years of age.
2. Actively practicing attorneys, physicians, dentists, registered nurses, members of the clergy or of a religious order and full-time students and teachers.
3. A person having active care and custody of a child or children under the age of 10 years of age (or over 10 years of age if overnight stay is required) whose health and/or safety would be jeopardized by absence for jury service; or a person who is essential to the care of aged or infirm persons.
4. A person who has served as a grand or petit juror within the last two years.
5. Undue hardship to business or sole proprietor of business. (A person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that it must close or cease to function if required to perform jury duty.)
6. A person who serves as a "volunteer safety personnel", such as a firefighter, member of a rescue squad or ambulance crew for a "public agency", consistent with the provisions of Section 1863(b) of the Act, as amended.

## XI.

## EXEMPTION FROM JURY SERVICE

Only those persons who are exempt from jury service under the provisions of Section 1863(b)(6) of the Act, as amended, shall be exempt from jury service under this Plan:

1. Members in active service in the Armed Forces of the United States;
2. Members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any

subdivision of a State, the District of Columbia, or such territory or possession;

3. Pubic officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

## XII.

## INDIVIDUAL EXCUSE FROM JURY SERVICE

In addition to the members of groups and occupational classes subject to excuse from jury service on individual request as provided in Section X of this Plan, any person summoned for jury service may, on request, be excused by the Court, upon a showing of undue hardship or extreme inconvenience, for such period as the Court deems necessary.

The term "undue hardship or extreme inconvenience" as used means great distance, either in miles or travel time, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the Court determines to constitute an undue hardship or to create an extreme inconvenience to the juror. In addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the Court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service.

## XIII.

## OBLIGATION TO SERVE AND PERIOD OF SERVICE

When summoned to serve as a juror, every person shall be obliged to serve unless determined to be disqualified, to be exempt, to be excluded or entitled to be excused. Unless otherwise ordered by the chief judge, the term of service of a prospective petit juror shall be two weeks, during which two-week period no prospective petit juror shall be required to report to the courthouse more than once unless (1) the jury-selection process in the case to which he or she has been prospectively assigned is continuing, or (2) he or she is selected as a juror. Prospective jurors who are not selected as trial jurors shall have satisfied their jury service obligation upon completion of voir dire, impanelment of the final jury, and discharge by the judge. Those prospective jurors who are selected as trial jurors shall have satisfied their jury service obligation upon completion of the trial. Grand jurors shall serve for a term not in excess of eighteen months unless extended by the Court.

In any two-year period, no person shall be required to serve or attend court for prospective service as a petit juror for a total of more than 30 days, except when necessary to complete service in a particular case; nor shall any person be required to serve upon more than one grand jury or to serve as both a grand and petit juror within a two-year period.

Grand and petit jurors shall initially be summoned in the manner provided in 28 U.S.C. § 1866(b). As needed thereafter, the Clerk shall, unless otherwise directed by the Court, notify jurors of the time, date and place to report by mail, in person, by telephone, through the U.S. Marshal or by whatever method the Clerk feels appropriate under the particular circumstances.

Any person summoned to jury service who fails to appear as directed may be ordered by the Court to appear forthwith and show cause for his/her failure to comply with the summons. Penalties may be levied in accordance with 28 U.S.C. § 1866(g).

## XIV.

## IMPANELING JURORS

Petit and grand jurors are randomly drawn from each jury division's Qualified Wheel. The Clerk shall form jury pools by drawing names from the Qualified Wheels, using a properly programmed electronic data processing system for pure randomized selection. Jurors in the pool will be summoned in accordance with Section 1866(b) of the Act for service as grand and petit jurors. Names of persons in the jury pools will be selected randomly and inserted, as needed, in jury panels. The Clerk shall prepare for the use of the Court and counsel a separate list of names of persons assigned to each jury panel.

## XV.

## PUBLIC ACCESS TO JURY INFORMATION

The Clerk shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

Names of jurors will not be disclosed to the public or media outside open court, except upon authorization by the Court. A request for disclosure of petit juror names by the media or public must be made to the presiding judge.

Juror records will be maintained by the court for four years after the Master Wheel has been emptied and refilled, as required by Section 1868 of the Act.

## XVI.

## EFFECTIVE DATE AND AMENDMENTS TO PLAN

This Plan shall become effective after approval by the reviewing panel, consisting of the members of the Judicial Council of the Ninth Circuit and the Chief Judge of this district.

The Court may modify this Plan at any time and it shall modify the Plan when so directed by the reviewing panel. The Court shall promptly notify the panel, the Administrative Office of the United States Courts, and the Attorney General of the United States of future modifications of the Plan by filing copies therewith. Modifications of this Plan made at the instance of the Court shall become effective after approval of the panel.

Submitted by the undersigned judges of the Eastern District of Washington this 23rd day of March, 2009.

ROBERT H. WHALEY
Chief United States District Judge

JUSTIN L. QUACKENBUSH
Sr. United States District Judge

EDWARD F. SHEA
United States District Judge

WM. FREMMING NIELSEN
Sr. United States District Judge

LONNY R. SUKO
United States District Judge

FRED VAN SICKLE
Sr. United States District Judge